



State of Wisconsin
2005 - 2006 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 182**

June 15, 2005 - Offered by Senator PLALE.

1 **AN ACT to amend** 767.263 (1), 767.265 (1), 767.303 (1), 767.33 (5) (a), 767.51 (6)
2 and 808.075 (4) (d) 4.; and **to create** 767.321 of the statutes; **relating to:**
3 temporary revision of child or family support when payer is on active military
4 duty.

Analysis by the Legislative Reference Bureau

Under current law, a person who is ordered by a court to pay child or family support may have the amount of support revised if there has been a substantial change in circumstances. A substantial change in circumstances includes such events as a change in the payer's earning capacity or a change in the needs of the child. Certain events, such as the expiration of 33 months since the support order was entered or last revised, constitute rebuttable presumptions that there has been a substantial change in circumstances. Even if the court finds that there has been a substantial change in circumstances, the court is not required to revise the support amount. If the court does revise support, however, it must use the percentage standard for setting the amount or, if the court determines that using the percentage standard would be unfair to the child or either of the parties, the court may modify the amount that would result from using the percentage standard on the basis of factors set out in the statutes. (The percentage standard is a percentage of the payer's gross income. The percentage varies with the number of children for which the support is paid.)

This substitute amendment requires a court to revise the amount of child or family support that a payer is obligated to pay if the payer is a member of the national guard or of a reserve unit of the U.S. armed forces, is called into active duty in the U.S. armed forces, and files a motion for the revision. The revised amount of support must bear the same proportion to the amount the payer is currently obligated to pay as the payer's military pay bears to the payer's income while not on active duty. If the payer files a motion for revision within ten days after being ordered to active service, the court must hold a hearing within ten days after receiving the motion or before the payer begins to serve on active duty, whichever is sooner. The revision in that case applies to the period beginning on the date on which the payer begins serving on active duty and ending on the date on which the payer is discharged from active duty. If, however, the court is unable to schedule the hearing before the payer's active duty begins, or if the payer does not file a motion for revision before his or her active duty begins but does file a motion for revision within 180 days after he or she is discharged from active duty, the court must hold a hearing after the payer is discharged from active duty. The revision in that case applies prospectively for the same amount of time as the payer's period of active duty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 767.263 (1) of the statutes is amended to read:

2 767.263 (1) Each order for child support, family support, or maintenance
3 payments shall include an order that the payer and payee notify the county child
4 support agency under s. 59.53 (5) of any change of address within 10 business days
5 of such change. Each order for child support, family support, or maintenance
6 payments shall also include an order that the payer notify the county child support
7 agency under s. 59.53 (5) and the payee, within 10 business days, of any change of
8 employer and of any substantial change in the amount of his or her income, including
9 receipt of bonus compensation, such that his or her ability to pay child support,
10 family support, or maintenance is affected. The order shall also include a statement
11 that clarifies that notification of any substantial change in the amount of the payer's
12 income will not result in a change of the order unless a revision of the order under

1 s. 767.32 or 767.321 or an annual adjustment of the child or family support amount
2 under s. 767.33 is sought.

3 **SECTION 2.** 767.265 (1) of the statutes is amended to read:

4 767.265 (1) Each order for child support under this chapter, for maintenance
5 payments under s. 767.23 or 767.26, for family support under this chapter, for costs
6 ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse under s. 767.02 (1)
7 (f), or for maintenance payments under s. 767.02 (1) (g), each order for or obligation
8 to pay the annual receiving and disbursing fee under s. 767.29 (1) (d), each order for
9 a revision in a judgment or order with respect to child support, maintenance, or
10 family support payments under s. 767.32, each order for a temporary revision in a
11 judgment or order with respect to child or family support payments under s. 767.321,
12 each stipulation approved by the court or a circuit court commissioner for child
13 support under this chapter, and each order for child or spousal support entered under
14 s. 948.22 (7) constitutes an assignment of all commissions, earnings, salaries, wages,
15 pension benefits, benefits under ch. 102 or 108, lottery prizes that are payable in
16 installments, and other money due or to be due in the future to the department or
17 its designee. The assignment shall be for an amount sufficient to ensure payment
18 under the order, obligation, or stipulation and to pay any arrearages due at a periodic
19 rate not to exceed 50% of the amount of support due under the order, obligation, or
20 stipulation so long as the addition of the amount toward arrearages does not leave
21 the party at an income below the poverty line established under 42 USC 9902 (2).

22 **SECTION 3.** 767.303 (1) of the statutes is amended to read:

23 767.303 (1) If a person fails to pay a payment ordered for support under s.
24 767.077, support under s. 767.08, child support or family support under s. 767.23,
25 child support under s. 767.25, family support under s. 767.261, revised child or

1 family support under s. 767.32 or 767.321, child support under s. 767.458 (3), child
2 support under s. 767.477, child support under s. 767.51, child support under s. 767.62
3 (4), child support under ch. 769, or child support under s. 948.22 (7), the payment is
4 90 or more days past due, and the court finds that the person has the ability to pay
5 the amount ordered, the court may suspend the person's operating privilege, as
6 defined in s. 340.01 (40), until the person pays all arrearages in full or makes
7 payment arrangements that are satisfactory to the court, except that the suspension
8 period may not exceed 2 years. If otherwise eligible, the person is eligible for an
9 occupational license under s. 343.10 at any time.

10 **SECTION 4.** 767.321 of the statutes is created to read:

11 **767.321 Temporary revision of child or family support while payer is**
12 **on active military duty. (1) REQUIREMENT; AMOUNT OF REVISION.** Notwithstanding
13 s. 767.32, if a member of the national guard or of a reserve unit of the U.S. armed
14 forces is obligated to pay child or family support and is called into active duty in the
15 U.S. armed forces, upon a motion filed as provided in this section, the court or circuit
16 court commissioner shall revise the child or family support to an amount that bears
17 the same proportion to the child or family support amount that the payer is obligated
18 to pay when the payer is called into active duty as the payer's military pay bears to
19 the payer's income while not on active duty.

20 **(2) MOTION AND HEARING; TIMING OF REVISION.** (a) *Before active duty.* The payer
21 may file a motion for a temporary revision in child or family support within 10
22 business days after being ordered to active service in the U.S. armed forces and shall
23 serve a copy of the motion on the payee and the county child support agency under
24 s. 59.53 (5). The motion shall include the date on which the payer will begin to serve
25 on active duty and the date on which the payer will be discharged from active duty,

1 if known. The court or circuit court commissioner shall schedule a hearing to be held
2 within 10 business days after the motion is filed, or before the payer begins to serve
3 on active duty, whichever is sooner. Unless the court or circuit court commissioner
4 is unable to hold a hearing before the payer begins to serve on active duty, the
5 revision in child or family support under sub. (1) shall apply for the period beginning
6 on the date on which the payer begins to serve on active duty and ending on the date
7 on which the payer is discharged from active duty.

8 (b) *After discharge from active duty.* 1. If the payer does not file a motion within
9 the time required under par. (a), the payer may file a motion for a temporary revision
10 in child or family support within 180 days after he or she is discharged from active
11 duty in the U.S. armed forces and shall serve a copy of the motion on the payee and
12 the county child support agency under s. 59.53 (5).

13 2. If the payer files a motion within the time required under par. (a), but the
14 court or circuit court commissioner is unable to hold a hearing before the payer
15 begins to serve on active duty, the court or circuit court commissioner shall hold a
16 hearing as soon as practicable after the payer is discharged from active duty.

17 3. If the payer files a motion as provided under subd. 1., or the court or circuit
18 court commissioner holds a hearing as provided under subd. 2., the revision in child
19 or family support under sub. (1) shall apply prospectively for a period that is the same
20 length as the period during which the payer served on active duty.

21 **(3) APPLICABILITY OF REQUIREMENT.** The court or circuit court commissioner is
22 not required to revise child or family support as provided under sub. (1) if a party files
23 a motion for revision more than 180 days after the payer is discharged from active
24 duty in the U.S. armed forces.

25 **SECTION 5.** 767.33 (5) (a) of the statutes is amended to read:

